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Supreme Court of the United States

Supreme Court, U. S.
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OCTOBER TERM, 1975

No. 75-1034

JAMES L. TRAINOR, Director of the Illinois Department of Public Aid; STEPHANIE RELEFORD, Administrator, Illinois Food Stamp Program; and the ILLINOIS DEPARTMENT OF PUBLIC AID, A State Agency,

Petitioners,

v.

GLORIA BANKS, CLYDE TOMPKINS, and MARY MORGAN, Individually and on behalf of all others similarly situated,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The petitioners, James L. Trainor, Director of the Illinois Department of Public Aid, Stephanie Releford, Director of the Bureau of Food Stamps of the Illinois Department of Public Aid, and the Illinois Department of Public Aid, respectfully pray that a writ of certiorari issue to review the opinion and order of the United States Court of Appeals for the Seventh Circuit entered in this proceeding October 23, 1975.

OPINION BELOW

The opinion of the Court of Appeals for the Seventh Circuit is not yet reported and hence appears in the appendix hereto, along with the preliminary injunction from which the petitioners originally appealed.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on October 23, 1975. No petition for rehearing was filed. This petition for certiorari was filed within 90 days of the date of the entry of the Court of Appeals' opinion. The Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Notice of Reduction of Food Stamp benefits received by the plaintiff-respondents was sufficiently adequate in terms of Constitutional Due Process?

2. Whether the same procedural safeguards enunciated in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), apply with the same force and effect to a reduction of benefits under the Food Stamp Program. 7 U.S.C., § 2011, *et seq.*

3. Whether the same Due Process Standards apply in cases of *reduction* vis-a-vis ***termination*** of benefits.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

United States Constitution

Fourteenth Amendment.

Statutes

7 U.S.C., § 2011, *et seq.*;

42 U.S.C., § 1983;

23 Illinois Revised Statutes, § 11-18 (1973).

Code of Federal Regulations

7 C.F.R. § 271.1;

7 C.F.R. § 271.3;

7 C.F.R. § 271.4.

STATEMENT OF THE CASE

Gloria Banks, Clyde Tompkins, and Mary Morgan, plaintiff-respondents (hereinafter plaintiffs) filed a complaint in the United States District Court for the Northern District of Illinois, individually and as representatives of a class, seeking declaratory and injunctive relief for violations of due process rights against James L. Trainor, Director of the Illinois Department of Public Aid, Stephanie Releford, Administrator, Illinois Food Stamp Program, and the Illinois Department of Public Aid, a State Agency, the defendant-petitioners herein.

Specifically, the plaintiffs alleged that a certain notice of reduction of food stamp benefits, sent by the defendants to the members of the plaintiff class did not adequately inform them of the action being taken and therefore denied the plaintiffs a property right without due process of law. (An exemplar of that notice is contained in the appendix hereto.) The plaintiffs further alleged that the notice violated the provisions of federal regulations applicable to the food stamp program, 7 C.F.R. § 271.1(n) (Appendix F). Jurisdiction was predicated upon 28 U.S.C. §§ 1331, 1337, 1343(3), and 1343(4).

The plaintiffs are all recipients of some form of categorical assistance under the Illinois Public Aid Code, Illinois Revised Statutes, Chapter 23, § 1-1 *et seq.* (1973). For this reason they have been referred to as "assistance households" in this litigation. Prior to July 1, 1975, the level of food stamp benefits for "assistance households" had been determined by use of the "percentage method", by which food stamp benefits were apportioned on a percentage calculation of income. The State of Illinois was

mandated by the United States Department of Agriculture to change the method of determining the level of food stamp benefits to the "income method", 7 C.F.R. § 271.3 (Appendix E). That method requires a detailed computation of deductions from income for certain expenses to arrive at a figure of "net food stamp income". That net figure determines the amount each household must pay for the "coupon allotment", i.e., the total value of food stamps fixed for a household of that particular size. While the coupon allotment for each different-sized household remains constant, the amount each household must pay varies according to their income. The face value of the food stamps is discounted to the recipients according to the amount which they must pay. The difference between the coupon allotment and the amount the recipient pays is called the "bonus value" of the food stamps. While "non-assistance households" in Illinois have had their benefits calculated on the income method for some time, the policy implementation of the "income method" for "assistance households" was to have occurred on July 1, 1975 pursuant to Illinois Department of Public Aid. O.B. 75.4 (Appendix D). The change in the policy of determining the level of benefits resulted in increased "bonus value" to 55% of the assistance households in Illinois and a reduction in "bonus value" to 40% (approximately 100,000 households, who are the plaintiff class).

Plaintiffs filed their action against the State Defendants on July 1, 1975, simultaneously with a Motion for a Temporary Restraining Order and Preliminary Injunction. The motions for interlocutory relief were scheduled to be heard as an emergency matter on Thursday, July 3, 1975. The July 3rd hearing was continued until July 7, 1975, for argument as to whether or not Plaintiffs represented a Class. Upon a brief argument by counsel on July 7, 1975, the

District Court determined that Plaintiffs represented a class and entered an order thereon, as well as entering a Preliminary Injunction. A motion to stay that order pending appeal was denied, as was an identical motion made to the Court of Appeals. (The Food and Nutrition Service of the United States Department of Agriculture appeared on July 3, 1975 and were joined as parties defendant on their own motion; the Department of Agriculture did not participate in the Appeal.)

The trial Trial Court held that the notice sent to the plaintiff class did not satisfy the Due Process requirements of the Fourteenth Amendment in that it did not adequately specify pertinent information underlying the determination of the level of food stamp benefits, and did not include information regarding income calculations made (Preliminary Injunction dated July 7, 1975, Appendix C). The State defendants filed an immediate appeal, alleging abuse of the trial Court's discretion and misapplication of law. The United States Court of Appeals for the Seventh Circuit set an expedited schedule for briefing, and oral argument was held on September 19, 1975.

While the appeal was pending, the State defendants attempted to comply with the preliminary injunction by securing current, up-to-date income and expense information on each member of the plaintiff class and to re-calculate their level of benefits and to notify them of reductions. The preliminary injunction was subsequently modified on September 12, 1975 (Appendix B) to prohibit any reductions predicated upon that policy, and an appeal from that modification was consolidated with the prior appeal.

On October 23, 1975, the Seventh Circuit Court of Appeals entered its order affirming the entry of the preliminary in-

junction in both its original and modified form (Appendix A). In so doing, the Court held that "due process requires full and adequate prior written notices", and that the notice sent to the plaintiff class was not sufficiently specific to comply with due process. Addressing the constitutional adequacy of the notice, the Seventh Circuit stated:

> The Notices sent to this class did not contain a breakdown of income and deductions so that the recipients could determine the accuracy of the computations. Since the Notices do not inform recipients of what factors are relevant in determining net food stamp income, the plaintiff class cannot inform caseworkers of expenditures that should be used. Similarly, the plaintiff class was not informed by chart or otherwise of the allotment and purchase prices for different size households based on their food stamp income, so that members of the class can ascertain whether they are receiving the correct amounts of coupon allotment. (Appendix, p. A10).

The defendants had argued that such highly specific details were not reasonably required by the flexible standard of due process; the Seventh Circuit Court of Appeals rejected that contention and brushed aside arguments that the State would suffer irreparable injury, observing:

> Defendants state that because of the preliminary injunction and modified preliminary injunction they are presently forced to pay approximately 1.6 million dollars per month in food stamp benefits in excess of the amount to which food stamp recipients in Illinois are entitled. This unfortunate situation can be speedily remedied by their compliance with the modified injunction which we conclude was properly entered. (Appendix, p. A13).

This Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

The opinion and order of the Seventh Circuit Court of Appeals (Appendix A) were issued upon the interlocutory appeal of the defendants, pursuant to 28 U.S.C. § 1292 (a)(1). The decision itself addresses the merits of the controversy in such a manner as to be final for purposes of review. It established a standard of specificity required for a notice of reduction of food stamp benefits as a condition of constitutional due process which is determinative of the merits of this action, as well as a precedent for subsequent controversies. This Court has often been willing to pierce the form of a proceeding to reach its substance, *Young* v. *Higbee*, 324 U.S. 204 (1944), an appropriate remedy here to review the opinion below. This approach is consistent with the pragmatic emphasis the Court has fashioned in determining the "finality" of decisions for purposes of appeal or certiorari. *Brown Shoe Co.* v. *United States*, 370 U.S. 294 (1962); *Local No. 483, Construction and General Laborer's Union, AFL-CIO* v. *Curry*, 371 U.S. 542 (1963). If the standard imposed by the Seventh Circuit in this case is let stand without immediate review, it is unlikely that this case will ever receive final review by this Court. This is so because of the constantly changing contents of the regulations issued by the Department of Agriculture and the program changes petitioner is asked to implement.

The Defendants are in need for immediate review of the opinion below by this Court. The Seventh Circuit ordered that the sole remedy for the petitioners to avoid the payment of 1.6 million dollars per month of food stamp benefits to which the plaintiff class is not entitled (Ap-

pendix, p. A13), was strict compliance with the unreasonably specific notice. Without undue burden, the petitioners cannot continue to administer two, separate methods of benefit determination in the food stamp program in Illinois under the preliminary injunction consistent with their duty of administration imposed by 7 U.S.C. § 2019. This same duty requires the Department to speedily eliminate the present waste of 1.6 million dollars per month in benefits. Furthermore, immediate review is required because while the form of the Seventh Circuit's Order is interlocutory, its substance and effect upon the petitioner is final and conclusive. In its unreasonable expansion of the doctrine of *Goldberg* v. *Kelly*, the Seventh Circuit Court of Appeals has in effect ruled on the merits of this action and has established the law of this case. Petitioner presently faces the dilemma of the threat of contempt or adhering to an excessively unreasonable standard of specificity not required by due process.

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I.

THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS AND OF THIS HONORABLE COURT WITH RESPECT TO THE PROPER APPLICATION OF THE FOURTEENTH AMENDMENT GUARANTEE OF DUE PROCESS.

The defendant-petitioners herein call upon the Court to answer the question left open by this Court in *Daniels* v. *Goliday*, 398 U.S. 73 (1970). That case, decided in the same term as *Goldberg* v. *Kelly*, 397 U.S. 254 (1970) explicitly refused to extend the principles of the *Goldberg* decision to cases involving a *reduction* of benefits vis-a-vis a *termination*. Rather, this Court remanded the *Daniels* case for a district court consideration of the due process standards applicable to such instances.

This Court's hesitancy to mandate the same strictures required by *Goldberg* to cases not presenting the "brutal need" interest of the plaintiff in that case is entirely consistent with its attitude regarding the due process standard. The principle is of necessity a flexible one and its application must be shaped according to the exigencies of the particular situation, *Fusari* v. *Steinberg*, 419 U.S. 379 (1974); *Arnett* v. *Kennedy*, 416 U.S. 134 (1974); *Cafeteria and Restaurant Workers* v. *McElroy*, 367 U.S. 886 (1961). The question in the instant case is the degree of specificity constitutionally required to notify individuals of a reduction in the discount value of food stamps occasioned by a federally mandated change in policy.

The Seventh Circuit in the opinion below has definitely applied the decision of *Goldberg* v. *Kelly* to reduction cases and has gone beyond the guarantees of "rudimentary" due

process. It has demanded that the defendants notify the plaintiff class not only of the reason for the proposed reduction of "bonus value" but also that it disclose each individual calculation required to implement the policy change in each of over 100,000 cases. The administrative hardship involved is obvious and all too real to the defendants. The interests of the representative plaintiffs, on the other hand, are a reduction in "bonus value" of $11.00, $39.00, and $19.00. Defendants respectfully submit that such a reduction in the intangible "bonus value" does not represent the type of "brutal need" with which this Court was faced in *Goldberg* v. *Kelly, supra.* (See *Basel* v. *Butz*, 66 F.R.D. 54 (D.D.C., 1975)).

The Courts of Appeals for the First and Fifth Circuits are in direct conflict with the opinion below as to whether *Goldberg*-type procedural safeguards are required in reduction cases, *Gonzales* v *Vowell*, 490 F. 2d 475 (5th Cir., 1974); *Velazco* v. *Minter*, 481 F. 2d 573 (1st Cir., 1973). The distinction which these Courts have fashioned between reduction and termination cases is constitutionally legitimate and conflicts with neither the Due Process clause nor the standards of *Goldberg* v. *Kelly*. As this Court stated in *Cafeteria and Restaurant Workers* v. *McElroy*, 367 U.S. 886, 894-895 (1961), wherein the Court held no specified notice was required to discharge an employee of the government's subcontractor, due process is not a technical conception with a fixed content unrelated to time, place, and circumstances. What procedures are necessary in one context may be totally inapplicable in another. The "detailed" notice requirement in *Goldberg* v. *Kelly* is totally inapplicable in cases of the type at bar, where the defendants have been mandated by the Federal Government to change the policy of benefit determination.

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The Fifth Circuit has held that in cases of *reduction* as opposed to termination of welfare benefits, *Goldberg* v. *Kelly* standards apply only when the effect of reduction closely approximates complete termination, *Gonzales* v. *Vowell*, 490 F. 2d 475 (5th Cir., 1974). The District Court for the District of Columbia has gone so far as to hold that *Goldberg*-type safeguards are not applicable at all to such ancillary welfare programs as food stamps, *Basel* v. *Butz*, 66 F.R.D. 54 (D.D.C., 1975). (The *Basel* Court so ruled in a similar case involving reduction of bonus value on a re-certification of eligibility.)

The best reasoning available in the application of *Goldberg* v. *Kelly* to reduction cases is in the opinion of *Velazco* v. *Minter*, 481 F. 2d 573 (1st Cir., 1974). Speaking of the impact of *Goldberg* and its companion case, *Wheeler* v. *Montgomery*, 397 U.S. 280 (1970), on a case involving only a reduction of benefits, the First Circuit stated:

> Those cases dealt only with the procedural Due Process required when a state *terminates* public assistance to a *particular recipient*. (Citations omitted) . . . In these circumstances, we believe the slight risk of loss to members of the Plaintiff's class is so heavily outweighed by the burdens and risks to the State's legitimate interests that the pre-reduction procedures employed here are constitutionally adequate. *Velazco* v. *Minter*, 481 F. 2d 573, 576-577 (C.A. 1st, 1973). (Emphasis in Original)

The Plaintiff in *Velazco* had argued that the notice was inadequate in that it did not give detailed computations of specific effects of State-wide changes on individual recipients' benefits. The Court brushed aside this contention, identical to the issue at bar, by saying:

> The worst fate that could have befallen a recipient would have been a short-term deprivation based on human and/or computer error. The recipient would then have been essentially in no worse a position than if there had been a mistake, human or mechanical, in sending out his regular check. *Velazco* v. *Minter*, 481 F. 2d 573, 577 (1973).

The conflict among the circuits on the issue of the applicability of Goldberg-type due process standards is an important question of federal law which has not been, and should be, settled by this Court. In the food stamp program itself, periodic reductions of "bonus value" or coupon allotment can occur because of the semi-annual readjustment of benefits mandated by 7 U.S.C. § 2016(a). The question, of course, is larger than just the effect of this order upon the food stamp program, as regulatory changes of the type in the instant case occur in every program by which the several governments impose burdens or dispense benefits.* Here, for instance, the defendants offered an adjudicative-type hearing and appeal (see Appendix H) even though one might not be constitutionally required, given the non-termination effect of the policy implementation. (The proffered hearing itself and the right thereto were never questioned below and are therefore not at issue). Moreover, because the policy sought to be implemented (the "income method" 7 C.F.R. § 271.3, Appendix E) was arguably mixed

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* A pertinent example is the approximately 5,000 new regulations issued annually by the Department of Health, Education and Welfare.

with a question of fact, i.e., the correctness of individual calculation, the defendants chose to give the plaintiff class prior notice and an opportunity for a pre-reduction hearing. These good-faith efforts to provide procedural safeguards were thwarted by the inflexible standard of specificity imposed by the Seventh Circuit in the opinion below. The issue of what types of notice, hearing, review, etc., to be implemented in reduction cases is an important question of public interest not only for the State of Illinois, but for every public entity, and should be decided by this Court. The rigidity of the Seventh Circuit as opposed to the view adopted by the First and Fifth Circuits is an example of a conflict which should be put to rest.

II.

THE OPINION BELOW ESTABLISHED A STANDARD OF SPECIFICITY REQUIRED BY DUE PROCESS SO FOREIGN TO ADMINISTRATIVE OR JUDICIAL LAW AS TO REQUIRE NEED OF THIS COURT'S REVIEW.

The petitioners submit that the opinion below sets forth a degree of specificity required by the Fourteenth Amendment which ignores the axiomatic balancing of interests traditionally applied in due process cases. The Seventh Circuit stated:

> Both *Goldberg* and *Vargas* [*Vargas* v. *Trainor*, 508 F. 2d 485 (7th Cir. 1974)] require detailed notice of adverse action as a protection against agency error and arbitrariness. Because the calculation of food stamp

> benefits under the income method requires an individualized determination of income, expenses and deductions for each recipient, due process requires full and adequate prior written notice. (Appendix, p. A10).

The detail required of the opinion in this case, in order to be "adequate", includes the entire computation of each household's income and deductions therefrom, and a chart to show the proper coupon allotment for the size of the household and that household's net income. The income method, set forth in 7 C.F.R. § 271.3(c)(1) (Appendix E, p. E4-E9), is a highly complicated formula of includable and excludable income, certain allowable deductions, certain standard deductions, etc. Its application is unique to every case. What the Seventh Circuit has decided that Constitutional due process requires in this case is in the nature of a bill of particulars, showing each computation made and how the policy sought to be implemented affects the household, in minute detail. Due Process does not require such a standard of specificity in pleading a federal cause of action let alone a criminal indictment. Yet the Seventh Circuit has demanded that a detailed disclosure be made before the "bonus value" of food stamps can be reduced by $11.00.

In this context, it should be remembered that *Goldberg* v. *Kelly*, *supra*, despite its far-reaching impact, was not a class action. When this Court approved a notice of termination in *Goldberg*, it decided that a notice of adverse action must inform the recipient of the reason why the action was proposed. Perhaps the fears expressed by Justice Black in his dissent in *Goldberg*, 397 U.S. 271, and those of the Chief Justice dissenting in the companion case of *Wheeler* v. *Montgomery*, 397 U.S. 282, have been realized in the instant case. In order to facilitate the Court of Ap-

peals' order in this case, the defendants must distribute to the plaintiff class the calculations done by hand in each of over 100,000 cases. That was not required of the defendants in *Goldberg* v. *Kelly, supra*, and should not be required here.

The standard which this Court has set for a notice to comply with Due Process is that it sufficiently apprise the party of the pendency of the proceeding and afford him the opportunity to respond, *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). The petitioners respectfully submit that the notice of reduction (Appendix, H) did exactly that. The reason given in the notice was not a perfunctory statement, but rather a reasonable explanation of the effect of the policy implementation:

> Because of a requirement in Section 271.3 of the regulations issued by the Food and Nutrition Service of the United States Department of Agriculture (7 C.F.R. § 271.3) the determination of how much you must pay for food stamps is going to be based upon your income. Illinois has been calculating your payment level for food stamps using a method that related to the amount of your grant. The change to this "income method" will take place starting with the month of July, 1975.
>
> This change in method of calculation will result in your receiving less "bonus value" from the Food Stamp Program than you previously received (this "bonus value" is the difference between the value of the food stamps and the amount you have to pay for them). The difference between the way your food stamp benefits would have been calculated under the old method and under the "income method" is shown on the enclosed case as follows:

The Notice further advised of appeal rights and provided the opportunity for the acquisition of further information by return of an enclosed postage-paid card.

This case presents an intriguing analogy between the content of this notice and of "notice" pleading under Rule 8 of the Federal Rules of Civil Procedure. The notice required by the Seventh Circuit in this case is a throwback to "fact" pleading which caused so much judicial hardship and inefficiency that justice was better served by its abandonment. The opinion below requires pre-reduction disclosure of each mechanical, mathematical step required to apply the mandated policy to any of the 100,000 households which were adversely affected. Due Process does not require such specificity before a defendant can be brought before a federal court, *Conley* v. *Gibson,* 355 U.S. 41 (1957); *Dioguardi* v. *Durning,* 139 F. 2d 774 (2nd Cir., 1944). The analogy can be carried further because the justification for the simplicity of notice pleading is the availability of modern discovery, *Conley* v. *Gibson, supra.* In the instant case, the detailed mathematical breakdown was available by the mere act of mailing the card enclosed with the notice in the postage-paid envelope which was provided (Appendix H).

Due Process does not even require such specificity in pleading a criminal indictment, where the interest of the party is his very liberty. An indictment is sufficient in terms of constitutional due process, if it contains the elements of the offense and gives enough information for the accused to plead double jeopardy, *Hamling* v. *United States,* 418 U.S. 87 (1974); *Russell* v. *United States,* 369 U.S. 749 (1962); *United States* v. *Kahn,* 381 F. 2d 824 (7th Cir., 1967) cert. den., 389 U.S. 1015 (1967). The sufficiency of a criminal pleading is to be determined on *practical* rather than technical considerations, *Collins* v. *Markley,* 346 F. 2d 230 (7th Cir., 1965) cert. den., 382 U.S. 946 (1966). This principle is consistent with the concept of due

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process being a flexible one, to be applied by the practicalities of the situation, *Mullane* v. *Central Hanover Bank and Trust Co., supra; Boddie* v. *Connecticut,* 401 U.S. 371 (1970).

In the case at bar, the Seventh Circuit Court of Appeals virtually ignored the practical aspects of their order. The burden imposed on the defendants is not only the administrative one of the preparation, by hand, of over 100,000 highly detailed notices (with a concomitant impact on the revenue of the State of Illinois) but also the impact of the continuation of the higher level of food stamp benefits. The private interests involved, a reduction in the "bonus value" of food stamps is minimal by comparison. A proper balancing of the interests of the parties in this case would validate the notice sent as in full conformity with Due Process. As the First Circuit stated in *Velazco* v. *Minter, supra,* the reference to the policy and regulation sought to be implemented and an explanation thereof was adequate notice where "there is only the question of a mathematical formula correctly applied . . ." 481 F. 2d 578 (1st Cir., 1973).

The opinion below, by necessary implication, assumes, for the purposes of the notice, that the individual calculations for each plaintiff are wrong, in that it demands the computation be disclosed to show its accuracy. That construction of due process ignores the fact that the defendants are required to make the computation solely from the information in their files, 7 C.F.R. § 271.4(a)(1) (Appendix G). Moreover, it ignores the statutory duty of the plaintiffs and their class to accurately report all the necessary information, and update it as required, 23 Ill. Rev. Stat., § 11-18 (1973), 7 C.F.R. § 271.3(A)(iii). It is patently un-

reasonable to presuppose administrative error in such a situation and yet that is the logic underlying the Seventh Circuit's order.

It is imperative to note that the context in which this controversy arose was that of a State-wide implementation of policy, mandated by federal regulation. The applicable regulation, 7 C.F.R. § 271.1(n)(2)(i) (Appendix F) provides that for such "Mass changes" no notice at all is required. The Court need not address the fact/policy distinction in this case, compare *FCC* v. *WJR*, 337 U.S. 265 (1949); *Hahn* v. *Gottlieb*, 430 F. 2d 1243 (1970), and whether notice was required at all, since the reasonableness of the notice actually sent is at issue. Arguably, the underlying facts of each case (income and expenses) are intertwined with the policy to be applied. The federal regulation on food stamp cases, 7 C.F.R. § 271.1(n)(2)(i), accurately reflects the current interpretation of due process in policy implementation cases. The important consideration of the factual issues which may be involved in the individual cases of the plaintiffs is that they are not *adjudicative* facts as were presented in *Goldberg* v. *Kelly*, *supra*, or *Wheeler* v. *Montgomery*, *supra*; see also *Vargas* v. *Trainor*, 508 F. 2d 485 (7th Cir., 1974); *Escalera* v. *New York Housing Authority*, 425 F. 2d 853 (2nd Cir., 1970). The character of the factual issues, arguably intertwined with the policy implementation, is an element to be considered in balancing the interests of the parties to determine what due process requires in this circumstance.

The issue is distilled to whether the notice sent to the plaintiffs (Appendix H) meets the test of reasonableness imposed by the Fourteenth Amendment guarantee of

due process. The defendants respectfully submit that the notice sent is eminently more reasonable than that notice ordered by the Seventh Circuit. That Court has gone beyond the requirement of "rudimentary due process" as established in *Goldberg* v. *Kelly, supra,* to demand a certainty and exactitude unknown to administrative law. The potential ramifications of such a highly detailed notice to every administrative agency are overwhelming. The petitioners are confronted daily with the enormous task of providing economic relief to an ever-increasing number of impoverished citizens; they must be permitted to continue meeting this duty without being shackled by the unreasonable constraints of the type of notice contemplated by the Seventh Circuit in the opinion below. Here the interests of the plaintiffs, a slight decrease in the "bonus value" of food stamps, was more than adequately protected by the notice sent to the class. The petitioners respectfully request that this Honorable Court take this occasion to reject the inflexible approach of the Court below and to restate and reaffirm the standard of reasonableness traditionally applied under the Due Process Clause.

CONCLUSION

For all these reasons, it is respectfully requested that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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APPENDICES

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APPENDIX A

Nos. 75-1621, 75-1861

GLORIA BANKS, *et al.*,

Plaintiffs-Appellees,

v.

JAMES L. TRAINOR, *Etc., et al.*,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division—No. 75 C 2156.

JOSEPH SAM PERRY and ALFRED Y. KIRKLAND, *Judges*

HEARD SEPTEMBER 19, 1975—DECIDED OCTOBER 23, 1975*

Before CUMMINGS, PELL and BAUER, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* This consolidated appeal is from the entry of a preliminary injunction by Judge Perry, sitting as emergency judge, as modified by Judge

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*This appeal was originally decided by unreported order on October 23, 1975. See Circuit Rule 28. The Court has subsequently decided to issue the decision as an opinion.

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Kirkland, to whom the case was assigned for trial. The three named plaintiffs filed this complaint on their own behalf and on behalf of those similarly situated seeking to enjoin the defendants from reducing their food stamp benefits on the basis of a change to the "income method" of calculating food stamp benefits until the defendants provide them with an adequate advance notice of the proposed reduction, "including a full statement of all income, and deductions therefrom, taken into account in determining net food stamp income, which determines the monthly cost of food stamps and benefits to plaintiff class." The class consists of all persons in Illinois who were mailed a Notice of Reduction of Food Stamp Benefits and accompanying card pursuant to which their food stamp benefits for July 1975 and subsequent months were being reduced.

Under the Food Stamp Act (7 U.S.C. §§2011-2026), a household eligible to participate in the Food Stamp program may purchase stamps at a discounted value, which may then be used to purchase food at retail stores. The difference between the value of the stamps received (the coupon allotment) and the cost of the stamps to the recipient is a bonus (bonus value) providing increased food purchasing power.

Under 7 U.S.C. §2014(b), the Secretary of Agriculture is required to establish uniform national standards of eligibility for participation by households in the Food Stamp program, and no plan of operation submitted by a state agency is to be approved unless the standards of eligibility meet those established by the Secretary. The Secretary's regulations provide the amount of a household's food stamp benefits be determined under the "income" method. See 7

CFR §271.3. Through its Department of Public Aid, the State of Illinois participates in the federal Food Stamp Program. Prior to 1975, the defendants had calculated the bonus value of the food stamps on a percentage of the food allowance for an individual household; commencing on July 1, 1975, defendants changed to the income method as required by 7 CFR §271.3(c). Under the income method, the bonus value is determined on the basis of "net food stamp income," which is defined as the household's gross income (7 CFR §271.3(c)(1) less certain deductions, such as medical expenses in excess of $10 a month, federal and state taxes, school tuition and fees, etc. See 7 CFR §271.3(c)(1)(iii). Once the net food stamp income is calculated, the bonus value is determined according to the size of the household from a chart published by the United States Department of Agriculture. (Complaint Exhibit D).

As a result of the conversion to the income method for determining the purchase price for food stamps, thousands of persons, including the three named plaintiffs, will be required to pay more for food stamps and therefore receive less bonus value for the same coupon allotment. The named plaintiffs and members of the class were informed of the change in method and reduction in benefits when defendants mailed them a Notice of Reduction of Food Stamp Benefits accompanied by a card indicating the amount of the reduction.

The Notice of Reduction contained a brief statement that because of a federally mandated change in the method of calculating food stamp benefits, the recipient's bonus value would be reduced; the accompanying card contained three figures, representing the recipient's income, the bonus value under the old method and the bonus value under the

new method. Nothing sent to the recipient explained how the income method worked. The recipients were not told that the income figure on the card was net food stamp income, not gross income. Nor did the notice explain how that figure was calculated. In addition, the notice did not reveal the underlying data which the defendants used in determining net food stamp income. However, the notice did offer to provide, upon request, a detailed calculation under the income method. Recipients were also told they could appeal in writing to their local office within 60 days and that benefits would not be reduced if the appeal was filed within ten days.

The gravamen of plaintiffs' complaint is that under federal regulations and the due process clause of the Fourteenth Amendment, plaintiffs are entitled to adequate notice from defendants prior to any reductions in their benefits. Plaintiffs claim that the notice of reduction and accompanying card are deficient because they do not provide sufficient information to enable a member of plaintiff class to determine whether an error has been committed. Plaintiffs seek notices that will provide them the reasons for the proposed agency action, including the foundation upon which the "income" figure is predicated and the deductions which are allowed by law. Such notices would include an explanation of how net food stamp income is calculated, recitation of the specific items of income and deduction used in the recipient's case and a chart enabling the recipient to determine whether he is receiving the amount of benefits to which he is entitled.

In granting a preliminary injunction after hearings on July 3 and 7, 1975, the district court found that the form Notice and accompanying card set out by defendants do not

contain information with regard to the method of calculating income or the information necessary to make that calculation or a chart setting forth the allotment and purchase prices for different size households based on their food stamp income. The court also found that plaintiffs would adequately protect the interests of the class of persons receiving such Notice and card and that injunctive relief was appropriate with respect to the class as a whole.

In its conclusions of law, the district court held that the form Notice and accompanying card were contrary to the requirements of 7 CFR §271.1(n)[1] and of the due process clause. Citing *Vargas* v. *Trainor*, 508 F. 2d 485 (7th Cir. 1974), certiorari denied, 420 U.S. 1008, the court concluded that plaintiffs were likely to prevail on the merits of their claim. In balancing the equities, the court found that the harm to the plaintiffs outweighed any administrative inconvenience that would be experienced by the defendants. Consequently, the court entered a preliminary injunction enjoining defendants from reducing the food stamp benefits of the members of the plaintiff class pursuant to the form Notice and accompanying card "until such time the mem-

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1. CFR §271.1(n) provides:

"*Notice of adverse action.* (1) Prior to any action to reduce or terminate a household's program benefits within the certification period, the State agency shall except as otherwise provided in the following paragraph (n)(2) of this section, provide such household 10 days' advance notice before such action is taken. The notice shall explain the reasons for the proposed action, the household's right to request a hearing and the circumstances under which participation is continued if a hearing is requested."

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bers of the plaintiff class are provided with adequate advance notice of the reasons for the proposed reduction, including a full statement of all income, and deductions therefrom, taken into account in determining net food stamp income." Defendants were ordered to reinstate the food stamp benefits of the members of plaintiff class to the original benefit level. On July 15, 1975, we refused to stay this preliminary injunction.

After the entry of the July 7, 1975, preliminary injunction, the defendants promulgated Illinois Department of Public Aid Official Bulletin 75.6 (O.B. 75.6), dated August 5, 1975, superseding the official bulletin which was in effect when the preliminary injunction was entered, in an effort to comply with the preliminary injunction. Under O.B. 75.6, defendants' practice would be to "conduct a face-to-face interview with each food stamp recipient [being put on the income method for determining food stamp income], securing current up-to-date income and expense information from each food stamp recipient and calculating food stamp income under the new method" (September 15, 1975, Emergency Motion for Stay Pending Appeal, p. 3). Recipients would complete a two-page application for food stamps (DPA 683) requiring answers to 20 questions. Although an executed Form 683 contains information necessary for defendants to compute eligibility for food stamps and net food stamp income, the recipients are never told which items of information from Form 683 are taken into account as either income or deductions therefrom in order to calculate net food stamp income. After the recipients leave the case-workers' office, the case-workers compute income and deductions to arrive at a net food stamp income figure. This is done on defendants' Form DPA 683B entitled "Deter-

mination of Monthly Food Stamp Eligibility Income." O.B. 75.6 further provides that members of the plaintiff class whose food stamp benefits would be reduced based on the information obtained from the interview were to be mailed a Form DPA 157 containing the following statement:

> "Your eligibility for food stamps has been redetermined and your net food stamp income has been computed. Your purchase requirement will be based on the net income basis of issuance as required by federal regulation (7 CFR 271.3)."

The DPA 157 also advised the recipients that they could meet with a representative of defendants to discuss the reduction and, if dissatisfied by this second interview, appeal the decision.

To prevent implementation of this policy, plaintiffs, contending that the notice provided in DPA 157 failed to comply with Judge Perry's order, petitioned Judge Kirkland for a modification of the preliminary injunction. On September 12, 1975, Judge Kirkland granted plaintiffs' motion, concluding that the Notice and procedures set forth in O.B. 75.6 did not comply with the terms of the preliminary injunction entered by Judge Perry and did not meet the requirements of due process.

He found that DPA 157 contained no statement of all income and deductions therefrom taken into account in determining net food stamp income and no explanation or statement with respect to the method of calculating net food stamp income. Additionally, he found that no information or statement with respect to the coupon allotment and purchase prices for different size households based on their food stamp income was provided to plaintiff class. Therefore, Judge Kirkland modified the preliminary injunction

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previously entered by enjoining defendants from reducing the food stamp benefits of members of the plaintiff class pursuant to the Notice and procedures set forth in O.B. 75.6. The defendants were required to reinstate the food stamp benefits of any member of plaintiff class which were reduced pursuant to O.B. 75.6. Finally, defendants were enjoined from reducing the food stamp benefits of members of the plaintiff class on the basis of conversion to the income method of calculating until the court should approve the prior written Notice to be sent to the members of the plaintiff class. On September 24, 1975, we refused to stay the preliminary injunction as modified. The Court now concludes that the preliminary injunction, as modified, should be affirmed.

Propriety of Preliminary Injunction

The preliminary injunction was entered to maintain the status quo. In such a case, an injunction may not be overturned except upon a showing of clear abuse of discretion. *Robinswood Community Club* v. *Volpe*, 506 F. 2d 1366 (9th Cir. 1974); *Hulburt Oil & Grease Co. of Pa.* v. *Hulburt Oil & Grease Co. of Illinois*, 346 F. 2d 260, 263 (7th Cir. 1965), certiorari denied, 382 U.S. 835. The appropriateness of granting a preliminary injunction depends upon a balancing of several factors, including the likelihood of success on the merits, the lack of adequate remedy at law, the prospect of irreparable harm if the injunction is not issued and a comparison of the relative hardships imposed on the parties. *Burns* v. *Paddock*, 503 F. 2d 18, 28 (7th Cir. 1974); *Tele-Controls, Inc.* v. *Ford Industries, Inc.*, 388 F. 2d 48, 50 (7th Cir. 1967). No one factor is determinative; the district court should be flexible and is given discretion to fashion suitable temporary relief. See *International Controls Corp.* v. *Vesco*,

490 F. 2d 1334, 1347 (2d Cir. 1974); *Hulburt Oil & Grease Co. of Pa.* v. *Hulburt Oil & Grease Co. of Ill., supra*, 346 F. 2d at 263. The preliminary injunction granted below is a proper exercise of that discretion. See *Nelson* v. *Likins*, 389 F. Supp. 1234 (D. Minn. 1974), affirmed, 510 F. 2d 414 (8th Cir. 1975); *Buckles* v. *Weinberger*, 387 F. Supp. 328 (M.D. Pa. 1974).

Under *Goldberg* v. *Kelly*, 397 U.S. 254, and *Vargas* v. *Trainor*, 508 F. 2d 485 (7th Cir. 1974), certiorari denied, 420 U.S. 1008, it would appear that the Notice and card sent to plaintiff class were deficient.[2] The Notice states that the enclosed card shows the difference "between the way your food stamp benefits would have been calculated under the old method and under the 'income method.'" The card enclosed only gives a figure for income and bonus value under the old system and the income method. The Notice also states that the determination of how much the recipients must pay for food stamps "is going to be based upon your

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2. Defendants rely on *Basel* v. *Butz*, 66 F.R.D. 54 (D.D.C. 1975), in which the court upheld the constitutionality of 7 CFR §§271.1(n)(1) and (2). In *Basel* the plaintiffs urged that it violated due process for the defendants to terminate food stamp benefits without advance notice and a hearing upon lapse of the recipients' certification. Under the Food Stamp Program households are certified to receive food stamps for a fixed period of time; the certification terminates automatically upon expiration of the fixed period, unless a new application for certification has been processed. Because the administrative scheme considered in *Basel* did not involve any individualized determination of eligibility, the case is distinguishable. However, to the extent the court held that due process requirements do not apply to the termination of food stamp benefits, we disagree.

income." This is partially true, for net food stamp income, not gross income, is the criterion, and the Notice does not show what deductions or whether any deductions from gross income are available.

The Notices sent to this class did not contain a breakdown of income and deductions so that the recipients could determine the accuracy of the computations. Since the Notices do not inform recipients of what factors are relevant in determining net food stamp income, the plaintiff class cannot inform caseworkers of expenditures that should be used. Similarly, the plaintiff class was not informed by chart or otherwise of the allotment and purchase prices for different size households based on their food stamp income, so that members of the class can ascertain whether they are receiving the correct amounts of coupon allotment.

Both *Goldberg* and *Vargas* require detailed notice of adverse action as a protection against agency error and arbitrariness. Because the calculation of food stamp benefits under the income method requires an individualized determination of income, expenses and deductions for each recipient, due process requires full and adequate prior written notice.

Defendants contend that no notice is required under 7 CFR 271.1(n), *supra*, n.1, because under 7 CFR 271.1 (n)(2)(i) individual notices of adverse action are not required for "Mass charges in benefits."[3] In view of the

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3. 7 CFR §271.1(n)(2) provides in relevant part:

"(2) Individual notices of adverse action are not required when:

"(i) Mass changes in benefits are required for certain classes of recipients because of changes required by Fed-

seeming applicability of the due process clause, it is unnecessary to resolve this matter, However, the exception of (n)(2)(i) appears to be inapplicable because the computation of each individual recipient's food stamp income requires an individual determination of his gross income and all allowable deductions.

The merits of the due process and regulation arguments are for resolution by the district court upon remand. We merely hold that plaintiffs have shown a sufficient probability of success to warrant the entry of the preliminary injunction.

In balancing the equities, the district court found that the plaintiff class would be irrevocably injured by the reduction in food stamp benefits and concluded that harm to their class far outweighed any possible harm to defendants. Before entering the preliminary injunction, the district judge recognized that defendants would suffer administrative inconvenience and cost. Nevertheless, the hardship to plaintiffs and their class was found to outweigh the administrative inconvenience and cost. See *Goldberg* v. *Kelly, supra,* 397 U.S. at 266; *Nelson* v. *Likins, supra,* 389 F. Supp. at 1237-1238. The balancing of the equities was within permissible bounds.

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eral or State law or Federal Regulation affecting the basis of issuance tables, income standards, or other eligibility criteria. Such changes include, but are not limited to, changes in maximum income limitations and basis of issuance tables prescribed in the general notice published in the *Federal Register* pursuant to §271.5, and changes in social security payments or public assistance grants."

Defendants contend that the district court should have permitted them to call two witnesses before entering the preliminary injunction. But defendants did not seek to call these witnesses until the trial court already announced its decision to enter a preliminary injunction on behalf of the class. Also, the affidavits of these two witnesses were already before the court. Therefore, defendants' interests were sufficiently protected. *Schlosser* v. *Commonwealth Edison*, 250 F. 2d 478, 480 (7th Cir. 1958), certiorari denied, 357 U.S. 906.

The preliminary injunction was properly entered.

Propriety of Modifications of Preliminary Injunction

Nothing in the new procedures adopted by the defendants pursuant to O.B. 75.6 weighs in their favor the balancing of factors to be considered on a motion for a preliminary injunction. The notice given to members of plaintiff class through DPA 157 does not give them adequate notice of the reasons for the proposed reduction even though basic information concerning income and deductions taken into account in determining net food stamp income has been routinely processed by defendants on Form DPA 683B. Form DPA 157 does not explain the terms "purchase requirement" and "net income basis" used on the notice. Furthermore, it does not tell the recipients that any deductions are available at all in determining "net income basis and issuance," much less the deductions made in their individual cases. Since the new notices do not enable plaintiffs and their class to determine whether or not defendants' computations are accurate, the notices are still insufficient under *Goldberg* v. *Kelly*, *supra*, and *Vargas* v. *Trainor*, *supra*.

Defendants state that because of the preliminary injunction and modified preliminary injunction they are presently forced to pay approximately 1.6 million dollars per month in food stamp benefits in excess of the amount to which food stamp recipients in Illinois are entitled. This unfortunate situation can be speedily remedied by their compliance with the modified injunction which we conclude was properly entered.

Rather than engaging in a lenthy trial on remand, the parties should work out a program which will provide plaintiffs and their class with the minimum necessary information at the least possible cost to defendants. Plaintiffs should only require the base essentials from defendants in a good faith effort to ease the administrative burden. We are confident that the district judge will, if necessary, render his good offices in accomplishing such a settlement.

The orders granting the preliminary injunction and the modifications thereto are affirmed.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GLORIA BANKS, et al.,
Plaintiffs,
v.
JAMES L. TRAINOR, et al.,
Defendants.
No. 75 C 2156

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND MODIFICATION OF PRELIMINARY INJUNCTION

This cause coming on for hearing on plaintiffs' motion for modification of the preliminary injunction, and said motion being fully briefed by the parties, and the Court having heard the arguments of counsel in open court, and being fully advised in the premises, now makes the following findings of fact and conclusions of law:

FINDING OF FACT

1. Pursuant to Illinois Department of Public Aid Official Bulletin 75.6, promulgated on August 5, 1975, members of the plaintiff class whose food stamp benefits are to be reduced based on the income method of issuance are to be mailed a Form DPA 157 with the following statement:

> "Your eligibility for food stamps has been redetermined and your net food stamp income has been computed. Your purchase requirement will be based on the net income basis of issuance as required by federal regulation (7 C.F.R. 271.3)."

2. No statement of all income, and deductions therefrom, taken into account in determining net food stamp income is provided in the advance written notice to members of the plaintiff class.

3. No explanation or statement with respect to the method of calculating net food stamp income, including available deductions from gross income, is provided in the advance written notice to members of the plaintiff class.

4. No information or statement with respect to the coupon allotment and purchase prices for different size households based on their food stamp income is provided to members of the plaintiff class.

5. The members of the plaintiff class have been, and will be, irreparably injured by the reduction in their food stamp benefits.

CONCLUSIONS OF LAW

1. The notice and procedures set forth in O.B. 75.6 do not comply with the terms of the preliminary injunction previously entered in this cause.

2. The preliminary injunction dated July 7, 1975 was issued by another judge of this District, with identical jurisdiction and authority as the undersigned; and it would be inappropriate for the undersigned to review and reconsider the findings, conclusions of law and orders contained therein.

Any request for review and reconsideration of said previous preliminary injunction should be directed to the District Judge who issued it, or to the Circuit Court of Appeals. The undersigned District Judge will not sit in review of said

preliminary injunction; and accepts it as binding upon this Court at this time.

3. The members of the plaintiff class are entitled to a modification of the preliminary injunction as hereinafter set forth.

MODIFICATION OF PRELIMINARY INJUNCTION

IT IS ORDERED, ADJUDGED AND DECREED that the defendants, their agents and employees, and all persons in active concert and participation with them, are hereby enjoined from reducing the food stamp benefits of members of the plaintiff class pursuant to the notice and procedures set forth in O.B. 75.6.

IT IS FURTHER ORDERED that the food stamp benefits of any member of the plaintiff class which have been reduced pursuant to O.B. 75.6 and the procedures set forth therein, shall be reinstated to their benefit level prior to the reduction, and such reinstatement shall be effectuated no later than 14 days from the date of this order.

IT IS FURTHER ORDERED that the defendants, their agents and employees, are enjoined from reducing the food stamp benefits of the members of the plaintiff class on the basis of conversion to the income method of calculation until such time that this Court approves the prior written notice to be sent to members of the plaintiff class.

This modification shall remain in full force and effect until final hearing of this cause, or until further order of this Court.

Judge.

DATED: September 12, 1975.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GLORIA BANKS, CLYDE TOMPKINS, and MARY MORGAN, individually and on behalf of all others similarly situated, Plaintiffs, v. JAMES L. TRAINOR, Director, Illinois Department of Public Aid; STEPHANIE RELEFORD, Administrator, Illinois Food Stamp Program; and the ILLINOIS DEPARTMENT OF PUBLIC AID, a State Agency, Defendants.	No. 75 C 2156

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PRELIMINARY INJUNCTION

This matter coming on for hearing on plaintiff's motion for a preliminary injunction, the defendants having received notice and being represented by counsel, and the Court, having considered the complaint, affidavits, exhibits, and memorandum presented by plaintiffs, and the representations and arguments of counsel for all parties in open court, and being fully advised in the premises, now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff Gloria Banks receives a grant of $261.00 through Aid to Families with Dependent Children and participates in the Food Stamp Program administered by the Illinois Department of Public Aid. Plaintiff Banks has received a form notice from the Illinois Department of Public Aid stating that the bonus value of her food stamps will be reduced from $89.00 to $70.00, based upon an income of $216.30.

2. Plaintiff Clyde Tompkins, age 84, receives Social Security, Supplemental Security Income, and state supplemental benefits, and also participates in the Food Stamp Program. Plaintiff Tompkins has received a notice from the Illinois Department of Public Aid that the bonus value of his stamps will be reduced from $29.00 to $18.00, based upon an income of $147.83.

3. Plaintiff Mary Morgan receives a grant of $261.00 through the Aid to Families with Dependent Children Program, and participates in the Food Stamp Program. She has received a notice that the bonus value of her stamps will be reduced from $89.00 to $50.00 per month.

3A. No pertinent information underlying the determination of income or the reduction of food stamp benefits was provided to plaintiffs, or members of the plaintiff class.

4. Numerous other households receiving public assistance and participating in the Food Stamp Program have received a notice and accompanying card (Exhibits A and B, attached to the Complaint, and incorporated herein) from the Illinois Department of Public Aid informing them that their benefits will be reduced effective July, 1975. The

form of notice and the form of the card in each case is identical.

5. The form notice and accompanying card sent to participants by IDPA does not contain information with regard to the method of calculating income, or the information necessary to make that calculation, or a chart setting forth the allotment and purchase prices for different size households based on their food stamp income.

6. Defendant James Trainor is the Director of the Illinois Department of Public Aid, and is charged with the statewide administration of the Food Stamp Program, and with establishing regulations to carry out the statutory provisions of such program. Defendant Stephanie Releford is the Administrator of the Illinois Food Stamp Program and is responsible for the direct supervision of that program throughout the State. The Defendant Illinois Department of Public Aid is the state agency charged with administering the Food Stamp Program in Illinois.

7. The named plaintiffs have brought this action as a class action on their own behalf and on behalf of all other persons in Illinois who have received, or will receive, Notice of Reduction of Food Stamp Benefits, and accompanying card, pursuant to which their food stamp benefits for July, 1975 and subsequent months, have been, or will be, reduced.

8. This class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class, and the claims of the plaintiffs are typical of the claims of the class. Plaintiffs will fairly and adequately protect the interests of the class. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive relief with respect to the class as a whole.

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9. Those persons composing the class are, and will continue to be, immediately and irreparably, injured by the reduction in their food stamp benefits.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties to this action and over the subject matter of the action.

2. The form notice and accompanying card (Exhibit A and B) disseminated to the members of the plaintiff class by James L. Trainor, Stephanie Releford, and the Illinois Department of Public Aid are contrary to the requirements of 7 C.F.R. § 271.1(n) (40 Fed. Reg. 1885, Jan. 9, 1975) and to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The Court is at this time satisfied that plaintiffs are likely to prevail on the merits of their claim. *Vargas* v. *Trainor*, 508 F. 2d 485 (7th Cir. 1974).

3. This action is properly maintainable as a class action as defined in Paragraph 7, *supra*. Federal Rules of Civil Procedure, 23(a) and (b).

4. Plaintiffs and the members of the class will suffer immediate and irreparable injury if preliminary injunctive relief is denied, and the harm to the members of the plaintiff class far outweighs any possible harm to the defendants.

5. Plaintiffs and the class they represent are entitled to a preliminary injunction as hereinafter set forth.

PRELIMINARY INJUNCTION

IT IS ORDERED, ADJUDGED and DECREED that the defendants, their agents and employees, and all persons in active concert and participation with them, are hereby enjoined from reducing the food stamp benefits of the members of the plaintiff class pursuant to the form notice and accompanying card until such time that the members of the plaintiff class are provided with adequate advance notice of the reasons for the proposed reduction, including a full statement of all income, and deductions therefrom, taken into account in determining net food stamp income.

IT IS FURTHER ORDERED that the food stamp benefits of any member of the plaintiff class which have been reduced to the form notice, use of which is hereby enjoined, be reinstated to the original benefit level, retroactive to the date of reduction, and that such reinstatement be effective no later than 14 days from the date of this order.

IT IS FURTHER ORDERED that the preliminary injunction be and remain in full force and effect until final hearing of this cause and until further order of this Court.

ENTER: [Signed duplicate order]

S. PERRY

Judge

Dated: July 7, 1975

APPENDIX D

6-16-75

State of Illinois
Department of Public Aid

FOOD STAMP OFFICIAL BULLETIN NO. 75.4

Amends Food Stamp Manual
Chapters 2000 and 3000

Supplements Food Stamp Manual
Chapter 7000

Amends Food Stamp O.B 75.1
ABCDEF
12345

Re: CERTIFICATION PROCEDURES—FSMC 2000
BASIS OF ISSUANCE AND AUTHORIZATION
INSTRUCTIONS—FSMC 3000
APPEALS AND FAIR HEARINGS—FSMC 7000

Conversion of Net Income Basis of Issuance for Assistance Households

Effective with food stamp issuances made for the month of July, 1975 the Department will implement use of the net income basis of issuance of food stamps for *all* households. This change in the method by which the purchase price is computed does not affect household eligibility. Public assistance households continue to be eligible without regard to the amount of income and resources. Conversion to the net income basis of issuance will be handled automatically for all assistance households currently on the regular issuance rolls which have Item 29, "Food Stamp Income", reflected on either Form DPA 552, Au-

thorization of Assistance Action, or Form DPA 684, Authorization of Food Stamp Action. Local office staff will be responsible for conversion for all households for which there is no Item 29 information in data processing records and for all households for which issuance is made manually at the local level.

I. *Bureau of Information Systems Action*

During processing for the month of July, 1975, the Bureau of Information Systems will automatically convert to the income basis of issuance when preparing Forms DPA 682, Authorization to Purchase Food Stamps (ATP document), for all assistance households on the regular issuance rolls which have Item 29 information available. The food stamp purchase requirement reflected on the ATP documents for these households will be computed from the food stamp income amount.

A. *Advance Notice*

The Bureau of Information Systems will simultaneously analyze individual household situations and prepare appropriate advance notice material for as many households as possible. The analysis of household situation involves a comparison of the bonus amount of food stamps that the household would have received had the food allowance basis of issuance been used and the bonus amount of food stamps using the net income basis of issuance. For this reason, it is imperative that the correct food allowance amount be entered on Forms DPA 684 being submitted for these house-

holds for July. Notices will be prepared in every instance in which both amounts can be computed centrally.

1. Attachment I reflects the notice that will be sent to all households for which the bonus amount computed by the income method is equal to or greater than the bonus amount computed by the percentage of food allowance method.

2. Attachment II reflects the notice that will be sent to all households for which the bonus amount computed by the income method is less than the bonus amount computed by the percentage of food allowance method.

One other type of notice will be generated centrally. For households which are being issued retroactive benefits, the notice will reflect the following message: "Your retroactive benefits will be issued by your local office." Instructions for handling retroactive benefit situations are described in Section II.B. below.

B. *Information Listings*

The Bureau of Information Systems will also prepare listings of households receiving notices and/or requiring local office action. These listings will be produced on a schedule by schedule basis in caseload number order within each office.

All households receiving notices from Springfield will be reflected on these listings. Each household will be identified and the same information that

appears on the notice received by the household will be reflected on the listings.

A separate listing will be prepared for those households which will not be receiving ATP documents during July because there is no food stamp income information in the data processing records. Instruction for handling households reflected on this listing are described in Section II.A. below.

II. *Local Office Action*

Local office staff are responsible for insuring that all authorizations and issuances made on and after July 1, 1975 reflect the implementation of the net income basis of issuance. Under no circumstances may the old food allowance basis of issuance be used for any authorization or issuance made on or after July 1 unless the issuance is made as the result of an appeal as described in Section II.C. below.

A. *Households For Which There Is No Income Amount In Record*

A listing is being provided of those households for which there is no Item 29 information in data processing records. This listing carries the heading, "PA FOOD STAMP HOUSEHOLDS SUSPENDED JULY 1975 FOR LACK OF FOOD STAMP INCOME AMOUNT." The listing will be prepared in caseload number order within each office and will reflect the case identification number, name, address, caseload code and authorization form number for each suspended household. Immediate action is mandatory for each and every household reflected on the suspension listing. The required action is as follows.

1. Each and every household is to be reviewed immediately to determine eligibility and the basis of issuance according to program standards in effect for July, 1975.

2. If the household is no longer eligible, Form DPA 157, Notice of Change, is to be prepared according to existing instructions and immediately sent to the household. Form DPA 552 or DPA 684 as appropriate to the household should be submitted to terminate food stamp program participation.

3. If the household continues to be eligible, compute and compare the food stamp bonus amounts for July, using both the old food allowance method (see Attachment IV) and the new income method.

   a. If the bonus under the income method is equal to or higher than the bonus under the food allowance method, a notice letter is to be prepared according to the format reflected in Attachment III. A copy of the notice letter is to be retained in the household's case file. On the regularly scheduled mail date for July, ATP documents are to be prepared reflecting the purchase, bonus and total amounts computed by the income method and sent to the household.

   b. If the bonus under the income method is less than the bonus amount would have been under the food allowance method,

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Form DPA 157 is to be prepared and sent to the household at least ten days in advance of the mail date of the July ATP document. The policy reference to be cited on the DPA 157 is this bulletin. The explanation of the action being taken should read: "The amount you must pay for your food stamps now is based on your income. According to our records, your income is $....., and your previous bonus amount of $..... is being reduced to $..... If you wish to have an itemized computation of your income and bonus food stamps for July, 1975, please contact this office by July 31, 1975."

Regular computer issuance of ATP documents for these households is to be resumed by the submittal of the appropriate food stamp income amount in Item 29 of the food stamp authorization.

B. *Handling Retroactive Benefit Situations*

As noted previously, households which are reflected in data processing records as receiving retroactive benefits will be notified that the local office will continue to issue these benefits. Proper handling of these situations is as follows.

1. Recompute and compare the purchase, bonus and total amount that the household would be receiving in July under both the old food allowance method and the new income method.
2. If the bonus amount under the income method is equal to or greater than the bonus under

the food allowance method, prepare the ATP documents as usual and note any difference in the amount being offset against the total retroactive benefits due on the Form DPA 2042, Notice of Restoration of Retroactive Food Stamp Benefits.

3. If the bonus amount under the income method is less than the bonus under the food allowance method, a Form DPA 157 is to be sent ten days in advance of the issuance of the July retroactive benefits. The DPA 157 is to explain that "Purchase requirements for food stamps are now based on income. The amount you must pay for your food stamps has increased to $..... as a result of this change and this higher amount is being offset against the amount of retroactive benefits due you."

   After the ten-day advance has expired, July retroactive benefits may be issued. Note the differences in the amount being offset against the total retroactive benefits on the Form DPA 2042.

C. *Handling Appeals Within the Ten-Day Advance Notice Period*

Because there are two separate actions taking place in the food stamp program during July, the handling of appeals filed within the 10-day advance notice period requires special attention. The change in coupon allotments and the basis of issuance tables which is being announced by Food

Stamp Manual Release 75.4 means that the actual previous benefit level cannot be used. The previous method of determining the benefit level can and should be used, however, provided that the coupon allotments which become effective for July are also used.

The tables and procedures to be followed when determining purchase, bonus and total amount of stamps by the food allowance method are provided as Attachment IV. This procedure can be used to compute amounts to be entered on ATP documents only in the event of an appeal filed during the ten-day advance notice period. The policy and procedures outlined in Food Stamp Manual Chapter 7000 are to be followed, with consideration to the above mentioned special requirement.

FOOD STAMP MANUAL NOTATIONS

Chapter 2000 — on page 2363.4 and 2400, line out the entire topic 2370.2. Enter the marginal notation, "Deleted per Food Stamp O.B. No. 75.4".

Chapter 7000 — on page 7540, next to topic 7610, enter the marginal notation, "See Food Stamp O.B. No. 75.4 for special instructions on appeals filed due to July, 1975 conversion to income".

FOOD STAMP OFFICIAL BULLETIN NOTATIONS

F.S.O.B. 75.1 — on the first page of the bulletin delete the paragraph titled "I. Computing Purchase Requirement for Public Assistance House-

holds". Enter the marginal notation, "Deleted per Food Stamp O.B. No. 75.4".

/s/ JAMES L. TRAINOR

Director

Forms Referred to:

DPA 157

DPA 552

DPA 682

DPA 684

DPA 2042

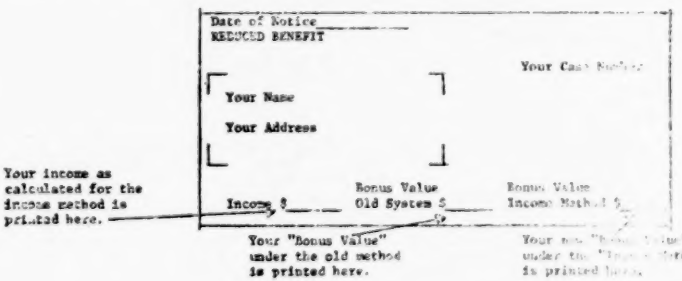
ATTACHMENT I

Illinois Department of Public Aid

NOTICE OR REDUCTION OF FOOD STAMP BENEFITS

Because of a requirement in Section 271.3 of the regulations issued by the Food and Nutrition Service of the United States Department of Agriculture (7 C.F.R. § 271.3) the determination of how much you must pay for food stamps is going to be based upon your income. Illinois has been calculating your payment level for food stamps using a method that related to the amount of your grant. The change to this "income method" will take place starting with the month of July, 1975.

This change in method of calculation will result in your receiving less "bonus value" from the Food Stamp Program than you previously received (this "bonus value" is the difference between the value of the food stamps and the amount you have to pay for them). The difference between the way your food stamp benefits would have been calculated under the old method and under the "income method" is shown on the enclosed card as follows:


Date of Notice
REDUCED BENEFIT
Your Case Number
Your Name
Your Address
Your income as calculated for the income method is printed here.
Income $
Bonus Value Old System $
Bonus Value Income Method $
Your "Bonus Value" under the old method is printed here.
Your new "Bonus Value" under the "Income Method" is printed here.

If you wish to have an itemized computation of your income and bonus value for July, 1975, please return the enclosed card in the enclosed postage-paid envelope by July 31, 1975. This itemized computation will give you additional information that you may want to have and can help you to determine if any error may have been made.

You may meet with a representative from the local office to question this action. This meeting would be informal and you may present information or evidence. You may be represented by a person(s) of your choice. If you wish such a meeting, contact your case manager. Whether or not you have such a meeting, you will still have the right to appeal the intended action.

YOU HAVE THE RIGHT TO APPEAL THIS DECISION

At any time, *within* 60 days following the "DATE OF NOTICE" shown at the top of the enclosed card, you have the right to appeal this decision and be given a fair hearing. Such an appeal must be in writing and filed with your local office. You may represent yourself at this hearing or you may be represented by anyone else, such as a lawyer, relative or friend. Your local office will provide you with an appeal form and will help you fill it out if you wish. If you appeal in writing within 10 days of the "DATE OF NOTICE", your food stamp benefits will be continued at the present level until a decision is made on your appeal after the hearing.

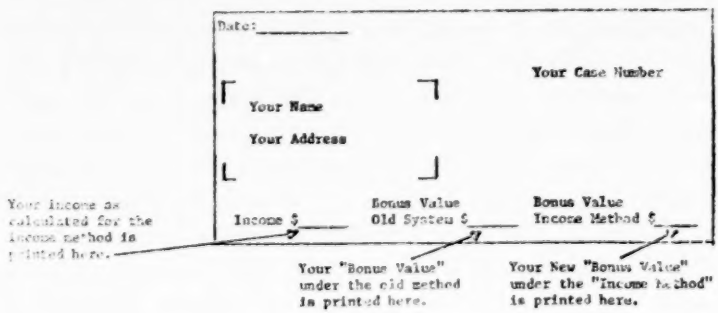
ATTACHMENT II

Illinois Department of Public Aid

CHANGE IN FOOD STAMP BENEFITS

Because of a requirement in Section 271.3 of the regulations issued by the Food and Nutrition Service of the United States Department of Agriculture (7 C.F.R. 271.3) the determination of how much you must pay for food stamps is going to be based upon your income. Illinois has been calculating payment level for food stamps using a method that related to the amount of your grant. The change to this "income method" will take place starting with the month of July, 1975.

The difference between your food stamp benefits as they would have been calculated under the old method and as they will be calculated under the new method is shown on the enclosed card as follows:


Date:_____
Your Case Number
Your Name
Your Address
Your Income as calculated for the Income method is printed here.
Income $____
Bonus Value Old System $____
Bonus Value Income Method $____
Your "Bonus Value" under the old method is printed here.
Your New "Bonus Value" under the "Income Method" is printed here.

APPENDIX E

7 C.F.R. § 271.3 Household Eligibility.

(a) *Household.* (1) Eligibility for and participation in the program shall be on a household basis.

(i) Eligibility shall be denied or terminated if the applicant household refuses to cooperate in providing information necessary for making a determination of eligibility or ineligibility. Applicants must assure that all statements made on the application are correct and complete.

(ii) If a participating food stamp household refuses to cooperate in providing the information necessary to complete a quality control review, the household may be subject to denial of further and/or future food stamp benefits. However, after such action and subsequent termination or denial, a household may reapply and be certified for participation in the Food Stamp Program: *Provided,* That the household cooperates fully and completely in supplying to the certifying officer full verification of all information prior to such certification.

(iii) Households shall report or cause to be reported to the State agency any of the following changes which occur during the certification period within 10 days of the date when such changes become known to the household: (a) Changes in gross monthly income in excess of $25; (b) changes in total monthly deductible expenses in excess of $25; and (c) changes in any other household circumstances which are required to be reported by the application form.

(iv) The State agency shall take necessary action on all changes within 10 days from the date they are reported (a) to insure the issuance of a notice of adverse action,

where appropriate, and that these changes will be reflected in the first issuance period after the expiration of the advance notice period; or, (b) for all other changes affecting the household's eligibility or basis of issuance, to insure the change is reflected by no later than the first issuance period after the 10th day from the day the change was reported.

(2) Eligible household members 60 years of age or older, who are housebound, feeble, physically handicapped or otherwise disabled to the extent that they are unable to adequately prepare all their meals, an elderly person as defined in § 270.2(r) of this subchapter, who is housebound, feeble, physically handicapped or otherwise disabled to the extent that he cannot adequately prepare all of his meals and the spouse of such an elderly person may use all or any part of the coupons issued to them to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(3) Eligible household members 60 years of age or older, or elderly persons as defined in § 270.2(r) of this subchapter and the spouse of such an elderly person may use all or any part of the coupons issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FNS for such purpose.

(4) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program on a nonresident basis may use all or any part of the coupons issued to them to purchase food prepared for or served to them during the course of such program by a private nonprofit organization or institution authorized by FNS.

Narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis shall be certified for program participation through the use of an authorized representative which shall be the private nonprofit organization or institution that is administering such treatment and rehabilitation program. Such organization or institution shall apply on behalf of such addict or alcoholic and receive and spend the coupon allotment for meals prepared by or served to such addict or alcoholic. Such organization or institution shall notify the State agency as provided in § 271.3(a)(1)(iii) of changes in income and household circumstances and when such addict or alcoholic leaves the treatment and rehabilitation center. Such organization or institution shall be responsible for any misrepresentation or fraud committed in the certification of center residents and shall assume total liability for food coupons held on behalf of resident recipients.

(5) Eligible households in Alaska residing in areas determined by FNS as areas where access to retail food stores is difficult and who rely substantially on hunting and fishing for subsistence may use all or any part of the coupons issued to them to purchase hunting and fishing equipments, excluding firearms, ammunition and other explosives.

(b) *Income and resource eligibility standards of public assistance and general assistance households.* Households in which all members are included in a federally aided public assistance or general assistance grant shall, if other wise eligible under this subchapter, be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

(c) *Income and resource eligibility standards of other households.* Each State agency shall apply the uniform national income and resource standards of eligibility established by the Secretary to determine the eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance or general assistance.

(1) *Definition of income.* (i) Monthly income means all income which is received or anticipated to be received during the month. To compute maximum monthly income for purposes of determining eligibility, income shall mean any of the following, but is not limited to:

(a) All compensation for services performed as an employee;

(b) Net income from self-employment, which shall be the total gross income from such enterprise (including the total gain received from the sale of any capital goods or equipment related to such enterprise), less the cost of producing that income. The following shall not be considered as the cost of producing income:

(1) Payments on the principal of the purchase cost of income-producing real estate. Any payments of principal, interest, and taxes on the home shall be subject to subdivision (iii)(g) of this subparagraph; (2) Payments on the principal of the purchase cost of capital assets, equipment, machinery, and other goods;

(3) Depreciation; and

(4) A net loss sustained in any previous period;

(c) The total amount of a roomer's payment to the household;

(d) The total payment received from each boarder less a deduction for each boarder of the value of the monthly coupon allotment for a one-person household;

(e) Payments received as an annuity; pension; retirement or disability benefit; veterans', workmen's or unemployment compensation; and old-age, survivors, or strike benefit;

(f) Payments received from federally aided public assistance programs, general assistance programs, or other assistance programs based on need;

(g) Payments received from Government-sponsored programs such as Agricultural Stabilization and Conservation Service programs, the Work Incentive Program, or Manpower Training Program;

(h) Payments, except those for medical costs, made on behalf of the house hold by a person other than a member of the household:

(i) Cash gifts or awards (except as provided in subdivision (ii)(e) of this subparagraph) for support, maintenance, or the expenses of education.

(j) Scholarships, educational grants (including loans on which repayment is deferred until completion of the recipient's education), fellowships, and veterans' educational benefits;

(k) Support and alimony payments; and

(l) Rents, dividends, interest, royalties, and all other payments from any source whatever which may be construed to be a gain or benefit.

(m) The actual value of housing received from an employer by members of a household as income in kind, in lieu of or supplemental to household income, not to exceed

$25 per month. No value is to be assigned to housing received as payment in kind which has been condemned or declared substandard under Federal, State, or local housing codes.

(ii) The following shall not be considered income to the household (this list is inclusive and no other exclusions from income shall be allowed):

(a) Income received as compensation for services performed as an employee or income from self-employment by a child residing with the household who is a student and who has not attained his 18th birthday;

(b) Payments received under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(c) Any gain or benefit which is not in money (except as provided in paragraph (c)(1)(i)(m) of this section).

(d) That income of a household in a quarter which is received too infrequently or irregularly to be reasonably anticipated: *Provided*, That such infrequent or irregular income of all household members does not exceed $30 in the quarter;

(e) Monies received from insurance settlements, sale of property (except for property related to self-employment provided for in subdivision (i)(b) of this subparagraph), cash prizes, awards, and gifts, inheritances, retroactive lump-sum pension payments, income tax refunds and similar nonrecurring lump-sum payments;

(f) All loans, except loans on which repayment is deferred until completion of the recipient's education.

(g) Income received by volunteers for services performed in the National Older Americans Volunteer Pro-

gram as stipulated in the 1973 Amendments to the Older Americans Act of 1965, Public Law 93-29 (87 Stat. 30).

(h) Payments received under the WIC (Woman, Infants, and Children) Program.

(iii) Deductions for the following household expenses shall be made (this list is inclusive and no other deductions from income shall be allowed):

(a) Ten percentum of income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month. This deduction shall be made before the following deductions.

(b) Mandatory deductions from earned income which are not elective at the option of the employee such as local, State, and Federal income taxes, social security taxes under FICA, and union dues;

(c) Payments for medical expenses, exclusive of special diets, when the costs exceed $10 per month per household;

(d) The payments necessary for the care of a child or other persons when necessary for a household member to accept or continue employment, or training or education which is prepatory for employment.

(e) Unusual expenses incurred due to an individual household's disaster or casualty losses which could not be reasonably anticipated by the household;

(f) Tuition and mandatory fees assesed by educational institutions (no deductions shall be made for any other education expenses such as, but not limited to, the expense of books, school supplies, meals at school, and transportation).

(g) Court-ordered support and alimony payments; and

(h) Shelter costs in excess of 30 percentum of the households' income after the above deductions. The State agency may develop, subject to FNS approval, standard unity allowances for use in calculating shelter costs: *Provided,* That the State agency must use actual utility costs if the household so requests and can verify such costs; and *Provided further,* That the State agrees to make annual reviews and adjust the standard, as necessary, to reflect deviations revealed by quality control, State agency surveys of utility company rates, or any other methods developed by the State and approved by FNS.

(2) *Handling of income.* (i) To determine the eligibility and basis of issuance of households, income and deductions may be averaged over the appropriate certification period.

(ii) To determine the basis of issuance for households whose primary source of income is self-employment (including self-employed farmers), or regular farm employment with the same employer, income may be average evenly or prorated unevenly over the certification period not to exceed one year.

(iii) To determine the eligibility and basis of issuance for households with income from scholarships, educational grants, fellowships, and veterans' educational benefits, the income shall be averaged over the period which it was intended to cover.

(iv) To determine the eligibility of households with members who receive compensation on other than an hourly or piecework basis under a contract which is renewable on a yearly or longer basis (such as, but not limited to, school employees), such members shall be deemed to be receiving compensation continuously for an entire year even though predetermined nonwork (vacation) periods are involved

or actual compensation payments are scheduled for payment during work periods only. For such persons, compensation received under such contracts shall be average over a 12-month period.

(3) *Income standards.* Uniform national income standards of eligibility for participation of nonassistance households in the program shall be the higher of: (i) The income poverty guidelines issued by the Secretary of Agriculture based on the statistics on poverty levels reported by the Census Bureau's Current Population Reports; or (ii) the level at which the total coupon allotment equals 30 percent of income. These income standards for each nonassistance household size will be prescribed in General Notices published in the *Federal Register.*

(4) *Resource definition and standards*—(i) *Maximum allowable resources.* The maximum allowable resources—including both liquid and nonliquid assets—of all members of the household shall not exceed $1,500 for the household, except that, for households for two or more persons with a member or members age 60 or over, such resources shall not exceed $3,000.

(ii) *Included in resources.* In determining the resource of a household, the following shall be included and identified in sufficient detail to permit vertification:

(a) Liquid resources which are readily negotiable, such as cash on hand, in a checking or savings account in a bank or other savings institution, U.S. savings bonds, stocks or bonds; and

(b) Nonliquid resources, such as buildings, land, or other real or personal property not excluded under subdivision (iii)(a) or (b) of this subparagraph.

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(iii) *Exclusions from resources.* In determining the resources of a household, the following shall be excluded. This list is inclusive and no other exclusions from resources shall be allowed:

(a) The home and lot normal to the community, one licensed vehicle, household goods, cash value of life insurance policies and pensions funds, and personal effects.

(b) Income-producing property which is producing income consistent with its fair market value, or other property such as another vehicle needed for purposes of employment, the tools of a tradesman or the machinery of a farmer, deemed essential to the employment of a household member.

(c) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(d) Resources whose cash value is not accessible to the household, such as, but not limited to, irrevocable trust funds and property in probate;

(e) Payments under Title II of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970;

(f) Payments under the WIC (Women, Infants, and Children) Program.

(iv) *Value of resources.* The value of resources shall be determined at fair market value, less encumbrances.

(d) *Work registration requirement.* At the time of application and at least once every six months thereafter, each able-bodied person between the ages of 18 and 65, which is a member of a household, including a person who is not working because of a strike or lockout at his place

of employment (except mothers or other members of the household who have responsibility for the care of dependent children under 18 years of age or incapacitated adults; students enrolled at least half-time in any school or training program recognized by any Federal, States, or local governmental agency; or persons working at least 30 hours per week), shall register for employment by executing the registration form which shall be provided by the State agency, and which the State agency shall forward to the State or Federal employment office having jurisdiction over the area where the registrant resides: *Provided,* That any narcotics addict or alcoholic who regularly participates as a resident or nonresident in a drug or alcoholic treatment and rehabilitation program shall not be considered "able-bodied" for the purpose of this section. For the purposes of subparagraphs (3)(iv) and (5) this paragraph (d), the term "strike" shall not include a strike which has pursuant to a court decision currently in force been determined to be unlawful.

(1) Such member who is required to register shall also:

(i) Report for an interview to the State or Federal employment office where he is registered upon reasonable request;

(ii) Respond to a request from the State or Federal employment office requiring supplemental information regarding employment status or availability for work;

(iii) Report to an employer to whom he has been referred by such office; and

(iv) Accept a bona fide offer of suitable employment to which he is referred by such office.

(v) Continue suitable employment to which he was referred by such office. Such household member shall continue such suitable employment until the employment is no longer considered suitable, or until the household member becomes exempt from the work requirement, as provided in this paragraph, or he is terminated from employment due to circumstances beyond his control.

(2) If the State agency determines that household member has refused without good cause to comply with the requirements of this paragraph, the household of which he is a member shall be ineligible to participate in the program. Such ineligibility shall continue:

(i) For 1 year from the date of his refusal without good cause to comply with such requirements; or

(ii) Until such household member complies as follows, whichever is earlier:

(a) Refusal to register—registration by the household member.

(b) Refusal to report for an interview to the State or Federal employment office where he is registered—reporting for the required interview.

(c) Refusal to respond to a request from the State or Federal employment office requiring supplemental information regarding employment status or availability for work—response to the employment office correspondence.

(d) Refusal to report to an employer to whom he has been referred by such office—reporting to such employer or another employer to whom he is referred.

(e) Refusal to accept a bona fide offer of suitable employment to which he was referred by such office—accept-

ance of such employment or of other employment of at least 30 hours per week.

(f) Refusal to continue suitable employment to which he has been referred by such office—returning to such employment or acceptance of other employment of at least 30 hours per week.

(iii) In determining whether good cause existed for failure to comply, the State agency shall consider all facts and circumstances, including information submitted by the State or Federal employment office, the employer, and the registrant or recipient himself.

(3) No employment shall be considered suitable for the purpose of this paragraph if:

(i) The wages are less than the highest of:

(a) The acceptable Federal minimum wage;

(b) The applicable State minimum wage;

(c) The applicable wage established by valid regulation of the Federal Government authorized by existing law to establish such regulations; or

(d) $1.30 per hour;

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under subdivision (i) of this subparagraph;

(iii) The registrant, as condition of employment, is required to join, resign from, or refrain from joining any legitimate labor organization; or

(iv) The work offered is at a site subject to a strike or a lockout at the time of the offer.

(4) Any employment offered a particular registrant shall be considered suitable unless he can demonstrate that:

(i) The degree of risk to his health and safety is unreasonable;

(ii) He is physically or mentally unfit to perform the employment, as established by documentary medical evidence or reliable information from other sources:

(iii) For a period of 30 days after registration only, the employment offer is not in his major field of experience.

(iv) The distance of the employment from his residence is unreasonable. Determinations in this connection shall be based upon estimates of the time required for going to and from work by means of transportation that is available or expected to be used, and whether or not it would be reasonable for the registrant to expend the time and cost involved for the expected remuneration from the work. In no event shall commuting time per day represent more than 25 percent of the registrant's total work time.

(5) No household shall be denied participation in the program solely on the grounds that a member of the household is not working because of a strike or a lockout at his place of employment.

(6) Registration for participation in the Work Incentive Program (WIP) by members of a household who are required to register for work as stipulated above shall be regarded by FNS as having fulfilled the requirements of this section.

(7) The provisions of this paragraph shall not relieve a household of its responsibility to report acceptance of any employment or receipt of income from employment obtained through any source by any member of the household.

(8) State agencies shall report monthly the number of households and persons whose benefits were reduced or terminated because they accepted employment, and the number who were terminated because of refusal to accept suitable employment.

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APPENDIX F

7 C.F.R. § 271.1(n)

(n) *Notice of adverse action.* (1) Prior to any action to reduce or terminate a household's program benefits within the certification period, the State agency shall, except as otherwise provided in the following paragraph (n)(2) of this section, provide such household 10 days' advance notice before such action is taken. The notice shall explain the reasons for the proposed action, the household's right to request a hearing and the circumstances under which participation is continued if a hearing is requested.

(2) Individual notices of adverse action are not required when:

(i) Mass changes in benefits are required for certain classes of recipients because of changes required by Federal or State law or Federal Regulation affecting the basis of issuance tables, income standards or other eligibility criteria. Such changes include, but are not limited to, changes in maximum income limitations and basis of issuance tables prescribed in the general notice published in the *Federal Register* pursuant to § 271.5, and changes in social security payments or public assistance grants;

(ii) The State agency receives a written statement from the head of the household or his authorized representative that food stamp assistance is no longer desired or that supplies information that requires reduction or termination of benefits and the recipient acknowledges in writing that he knows the required action will be taken;

(iii) The State agency receives notification of the death of the head of a single person household;

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(iv) The State agency receives notification that the household has moved from the project area; or

(v) The action is taken as a result of the normal expiration of the certification period as provided in § 271.4(a)(3).

(3) When the advance notice requirement is not required under the conditions specified in paragraph (n)(2)(i) of this section, the State agency shall publicize the possibility of a change in benefits through the various news media or through a general notice mailed out with ATP cards and with notices placed in food stamp and welfare offices.

(4)(i) If a household requires a hearing during the advance notice period, its participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action. If a hearing request is not made within the advance notice period, benefits will be reduced or terminated as proposed, except that, if the household establishes that its failure to make such request within such period is for good cause, the State agency may provide for reinstatement of benefits on the prior basis. When benefits are reduced or terminated without advance notice as provided in paragraph (n)(2)(i) of this section, participation on the prior basis shall be reinstated if the issue being appealed is that food stamp eligibility or benefits were improperly computed.

(ii) Once continued or reinstated, benefits shall not be reduced or terminated prior to a hearing decision unless:

(a) A determination is made at the hearing that the sole issue is one of Federal law, Regulation or policy and not a matter of fact or judgment relating to an individual case; or

(b) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action.

(iii) The State agency shall promptly inform the claimant in writing if benefits are reduced or terminated pending the hearing decision.

APPENDIX G

7 C.F.R. § 271.4(a)(1)

The State Agency shall provide for the certification of households in which all members are included in a federal aided public assistance or general assistance grant, solely on the basis of information contained in an affidavit and the assistance case file.

APPENDIX H

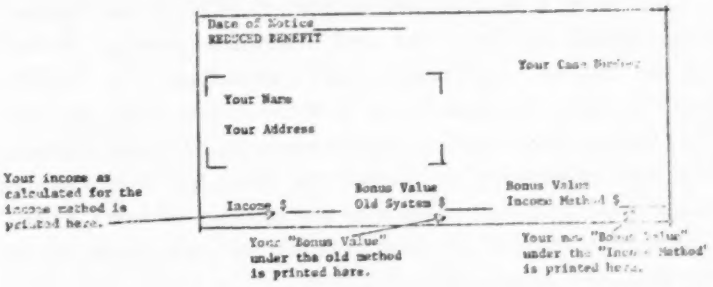
Illinois Department of Public Aid

NOTICE OF REDUCTION OF FOOD STAMP BENEFITS

Because of a requirement in Section 271.3 of the regulations issued by the Food and Nutrition Service of the United States Department of Agriculture (7. C.F.R. § 271.3) the determination of how much you must pay for food stamps is going to be based upon your income. Illinois has been calculating your payment level for food stamps using a method that related to the amount of your grant. The change to this "income method" will take place starting with the month of July, 1975.

This change in method of calculation will result in your receiving less "bonus value" from the Food Stamp Program than you previously received (this "bonus value" is

the difference between the value of the food stamps and the amount you have to pay for them). The difference between the way your food stamp benefits would have been calculated under the old method and under the "income method" is shown on the enclosed card as follows:


Date of Notice
REDUCED BENEFIT
Your Case Number
Your Name
Your Address
Your income as calculated for the income method is printed here.
Income $
Bonus Value Old System $
Bonus Value Income Method $
Your "Bonus Value" under the old method is printed here.
Your new "Bonus Value" under the "Income Method" is printed here.

If you wish to have an itemized computation of your income and bonus value for July, 1975, please return the enclosed card in the enclosed postage-paid envelope by July 31, 1975. This itemized computation will give you additional information that you may want to have and can help you to determine if any error may have been made.

You may meet with a representative from the local office to question this action. This meeting would be informal and you may present information or evidence. You may be represented by a person(s) of your choice. If you wish such a meeting, contact your case manager. Whether or not you have such a meeting, you will still have the right to appeal the intended action.

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YOU HAVE THE RIGHT TO APPEAL THIS DECISION

At any time, *within* 60 days following the "DATE OF NOTICE" shown at the top of the enclosed card, you have the right to appeal this decision and be given a fair hearing. Such an appeal must be in writing and filed with your local office. You may represent yourself at this hearing or you may be represented by anyone else, such as a lawyer, relative or friend. Your local office will provide you with an appeal form and will help you fill it out if you wish. If you appeal in writing within 10 days of the "DATE OF NOTICE", your food stamp benefits will be continued at the present level until a decision is made on your appeal after the hearing.